> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
>
> (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service . . . .[106]

Moreover, in the FCC's First Report and Order,[107] the FCC unequivocally found not only that "resale restrictions are presumptively unreasonable",[108] but also that "[i]ncumbent LECs can rebut this presumption [only] if the restrictions are narrowly tailored."[109] The FCC explained that the presumption exists because the ability of ILECs to impose resale restrictions and limitations is likely to be evidence of market power, and may reflect an attempt by ILECs to "preserve their market position."[110]

In this case, Verizon's anti-competitive attempt to tie the provision of local dial tone and vertical features by the same carrier evidences not just Verizon's market power in Pennsylvania, but represents a clear attempt to preserve its market position in the burgeoning sub-market for vertical services. Significantly, Verizon cannot reasonably contest neither that Sprint is a telecommunications carrier under the Telecom Act, nor that vertical features constitute telecommunications services within the meaning of Section 251 to which a duty to permit resale with a wholesale discount attaches.

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106 47 U.S.C. § 251(c)(4) (1999) (emphasis added).

107 In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, et al., First Report and Order, CC Docket Nos. 96-98, 95-185, FCC No. 96-325 (1996).

108 Id. at ¶ 939.

109 Id.

110 Id.

3. Verizon's Proposed Limitation of Section 251(c)(4) is Unsupported By the Statute or Implementing Regulations

Because provision of local dial tone and vertical features are separate retail offerings in Pennsylvania, Verizon assumes an obligation pursuant to Section 251(c)(4) to permit resale of each service. Verizon's initial assertion that it only has a duty under Section 251(c)(4) to permit resale of retail services "under the same terms and conditions as are provided by retail" is not supported by the plain language of the Act. The plain language of the statute does not contain any reference to an obligation being limited to the same terms and conditions that they are provided "at retail."[111]

Similarly, although the statute guides the responsibilities of the parties, the FCC has implemented regulations and the implementing regulations promulgated in the Local Competition First Report and Order . As in the statute, the FCC's regulations codified at 47 C.F.R. §§ 51.601 et seq. do not contain Verizon's purported limitation that services be offered under the same terms and conditions as are provided at retail. In fact, the FCC's regulations state:

> § 51.605 Additional obligations of incumbent local exchange carriers.
>
> (a) An incumbent LEC shall offer to any requested telecommunication carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for

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[111] Verizon Final Position Statement at 4, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed June 16, 2000).

> resale at wholesale rates that are, at the election of the state commission—
>
> * * *
>
> (b) Except as provide in § 51.613, an incumbent LEC shall not impose restrictions on the resale by a requesteing carrier of telecommunications services offered by the incumbent LEC.[112]

Neither the plain language of the statute nor the FCC's implementing regulation is ambiguous. Notwithstanding Verizon's attempt to limit them, both the statute and regulation are mandatory and not permissive. Both require that if the subject service is a "telecommunications service" within the meaning of the Telecom Act, and it is offered at retail to non-carriers, the ILEC has an obligation to permit the resale of that service without imposing any unreasonable restriction.[113] Accordingly, because local dial tone and vertical features are in reality two separate offerings, Verizon cannot deny Sprint's request to permit the resale of only vertical features. Furthermore, Verizon cannot legally force Sprint to take (or resell) dial tone as a prerequisite to offering a stand-alone vertical feature.

4. Local Dial Tone and Vertical Features are Two Retail Offerings.

Sprint has never denied that some form of dial tone is needed to make vertical features like call forwarding work. However, there is no reason that *the same carrier* must be the provider of *both* dial tone and vertical services when they are sold today separately and are two separate services.

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112 47 C.F.R. § 51.605 (1999).

113 See also 47 C.F.R. § 51.613(b) (1999) ("[w]ith respect to any restrictions on resale not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory").

Verizon in other jurisdictions has carefully tried to create the misperception that local dial tone and vertical features are a single, integrated offering.[114] However, Verizon is careful never to say that dial tone and vertical features are a "bundled" offering. Dial Tone and Vertical Services are offered separately, are priced separately, and are billed separately. Verizon cannot characterize local dial tone and vertical features as bundled, because bundled would imply more than one service being offered for a single price. Such a characterization would be flatly contradicted by the facts.

Similarly, Verizon bills vertical features separately, as different line items.[115] When an end user is billed for vertical features, it's not lumped in with the charge for the local service. Instead they are separately priced. In other words, when Verizon is selling the vertical features to its own end-user customer—Verizon has separate lines on the bill, one for optional services and one for the basic service. Even Verizon recognizes that they are, in fact, two separate services: one (dialtone) that is a "basic service," and another (vertical service) that is an "optional service." Although Verizon does have bundles of various vertical service packages for a

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114 Verizon Final Position Statement at 4-6, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed June 16, 2000).

115 *See* Verizon response to Sprint 2-1 and 2-2, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed June 16, 2000).

single price, the local exchange service is still sold for a separate price from the package of vertical services.

5. Because Local Dial Tone and Vertical Features are Separate Offerings, Verizon's Attempt to Tie Local Service to Vertical Features is an Unreasonable Limitation

As a technical matter, the same carrier need not provide both local dial tone and vertical features.[116] Importantly Verizon's tariffs and its provisioning in the real world indicate that vertical features can be provided without the same carrier also providing local dial tone. Moreover, Verizon admitted that "[a]n Enhanced Service Provider can purchase Call Forwarding features from [Verizon] without the line account."[117]

Because vertical features can be provided (and apparently are) by an entity not also providing local dial tone, Verizon's attempt to tie or "intertwine" local dial tone to vertical features constitutes an anticompetitive limitation on Sprint's ability to provision just vertical features. In essence, Verizon seeks to force Sprint to totally "win" the customer before the separate vertical service may be offered. Verizon does not impose this condition either on ESPs who take call forwarding out of its tariff, and, therefore, it is discriminatory.

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116 Flurer Declaration at ¶ 31.

117 Verizon response to Sprint 1-22, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed June 16, 2000).

Moreover, Verizon's attempt to tie two separate retail offerings together is not only evidence of its market power, but of its intent to preserve its market position in the market for vertical services.[118]

6. Verizon Cannot Avoid its Obligation Under Section 251(c)(4) by Forcing Sprint to Take Vertical Features Out of an Inapplicable Tariff that Can Be Amended at Any Time, with an Ordering and Provisioning Process that Frustrates Sprint's Ability to Compete Effectively.

Sprint is entitled under the Act to have contract language that addresses Verizon's Section 251(c)(4) resale obligation. An interconnection agreement will run for a set period of time, during which Verizon cannot *unilaterally* change its terms and conditions. In contrast, Verizon can seek to amend its tariff, including the ESP tariff, at any time through the advice letter process. Finally, Verizon simply cannot avoid its obligations under the Act, by invoking a tariff. Its tariff offerings do not necessarily track its responsibilities under Section 251(c)(4), as this case demonstrates.

Verizon admitted that it cannot process orders for Call Forwarding Busy Line/Don't Answer through its existing wholesale ordering system.[119] Accordingly, Verizon wants Sprint to order features, including call forwarding, through manual retail methods which introduce delay and frustrate its ability to compete against Verizon. Verizon must provide non-discriminatory access to its OSS systems,

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118 Cf. First Report & Order, ¶ 939 (explaining rationale for presumption of unreasonableness for any resale restriction).

119 Verizon response to Sprint1-2, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed June 16, 2000).

including to permit competition by resale.[120] Sprint is entitled to have access to OSS systems that are substantially similar to what Verizon offers to itself, its customers or its affiliates.[121] In short, the ordering processes permitted by the ESP tariff do not address Sprint's needs in order to compete effectively with Verizon to provide vertical features, and do not comply with its requirements under the Act imposed by Section 251(c)(4).

The FCC also addressed this issue in paragraph 877 of its *Local Competition Order First Report and Order.* In that order the FCC said,

> We conclude that the plain language of the 1996 Act requires that the incumbent LEC make available at wholesale rates retail services that are actually composed of other retail services, i.e., bundled service offerings. Section 251(c)(4) states that the incumbent LEC must offer for resale "any telecommunications service" provided at retail to subscribers who are not telecommunications carriers. The resale provision of the 1996 Act does not contain any language exempting services if those services can be duplicated or approximated by combining other services. On the other hand, section 251(c)(4) does not impose on incumbent LECs the obligation to disaggregate a retail service into more discrete retail services. The 1996 Act merely requires that any retail services offered to customers be made available for resale.[122]

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120 See In the Matter of Application of SBC Communications, Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996, CC Docket No. 00-65, FCC 00-238, ¶ 92-94, June 30, 2000).

121 Id.

122 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15930, 15931, 15934, paras. 863, 865-66, 871. (1996) (*Local Competition First Report and Order*), *aff'd in part and vacated in part sub nom., Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *petition for cert. granted*, Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, and 97-1141 (U.S. Jan. 26, 1998) (collectively *Iowa Utils. Bd. v. FCC*), *aff'd in part and remanded, AT&T Corp., et al. v. Iowa Utils. Bd. et al.*, 119 S.Ct 721 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. August 18, 1997), *further recons. pending.*

Also, as discussed above, the appropriate factors to examine whether a wholesale discount should apply are whether Sprint is a telecommunications carrier under the Act and that vertical features constitute telecommunications services within the meaning of Section 251(c)(4). Verizon cannot assert that vertical features are not telecommunications services, but instead emphasizes that the discount does not apply because vertical features are bundled with basic local service, or that Verizon is "not offering Call Forward Busy Line/Don't Answer on a stand alone basis at retail."[123] However, it is improper to exclude a service from the wholesale discount simply because it happens to be bundled with basic local service. If such were the case, then Verizon could circumvent the wholesale discount obligation on any existing or future service simply by bundling it with basic local service. This would clearly be anticompetitive and vitiate the wholesale discount obligation provided for in Section 251(c)(3).

Verizon's also quoted the FCC's *Local Competition First Report and Order* in support of its opposition to reselling vertical features at the wholesale discount.[124] Verizon's reliance on paragraphs 872 and 877 are equally without merit. While it is true that in paragraph 872 the FCC found that an incumbent local exchange carrier ("ILEC") does not have to make a wholesale offering of any service that the ILEC does not offer to retail customers, Verizon does offer vertical features to its customers at retail. The vast majority of purchasers of vertical features are end users, not telecommunications carriers.

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123 Verizon Initial Brief at 6 (emphasis in original), *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed June 16, 2000).

This is in contrast to exchange access services, that the FCC said are not subject to the resale requirements of section 251(c)(4).[125] The FCC held that exchange access services were not available for the wholesale discount because "these services are predominantly offered to, and taken by, IXCs, not end users."[126] The FCC went on to state that

> because access services are designed for, and sold to, IXCs as an input component to the IXCs own retail services, LECs would not avoid any 'retail' costs when offering these services at 'wholesale' to those same IXCs. Congress clearly intended section 251(c)(4) to apply to services targeted to end user subscribers, because only those services would involve an appreciable level of avoided costs that could be used to generate a wholesale discount.[127]

Unlike exchange access services, vertical features *are* predominantly offered to end users.

Similarly, paragraph 877 is not applicable to this issue. There the FCC stated that the Act does not require ILECs such as Verizon "to disaggregate a retail service into more discrete retail services."[128] However, Sprint is requesting to resell a retail service (*i.e.*, vertical feature). Again, Verizon offers this service at retail to its end user customers. Sprint is not requesting that Verizon disaggregate a vertical features into more discrete retail services.

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124 Id. at 5, note 4.
125 *Local Competition First Report and Order*, ¶¶ 873-74.
126 Id. at 874.
127 Id.
128 *Local Competition First Report and Order*, ¶ 877.

7. Decisions from other jurisdictions support Sprint's position

The California Commission recently issued a decision upholding the arbitrator's decision finding that Sprint is entitled to purchase retail telecommunications services such as vertical features at a wholesale discount.[129] In that decision the Commission ruled,

> We concur with the [Final Arbitrator's Report's] determination that Section 251(c)(4) requires the resale of vertical features, without purchase of the associated dial tone. Vertical features meet the Act's requirement of services offered at retail to end-user customers who are not telecommunications carriers. Pacific cannot claim technical infeasibility because its CNS tariff allows for certain vertical features to be sold without an access line, and voice mail providers, including Pacific's affiliate PBIS, purchase those features to provide voice mail service.
>
> Further, we concur with Sprint's assertion that it constitutes an unreasonable restriction under Rule 51.613(b) for Pacific to require that Sprint purchase the dial tone, in order to have access to the vertical services for that line. The CNS tariff gives us ample proof that the two elements do not need to be tied together.[130]

In addition, a recent decision issued in December 2000, the Texas Public Utility Commission ("Texas PUC") supports the resale of vertical features.[131] Southwestern Bell Telephone Company ("SWBT") offered a discounted package of services to business customers called Essential Office. Prior to obtaining the service, SWBT required the wholesale customer to also purchase business local

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129 *Application of Sprint Communications Company, L.P. for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Pacific Bell Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Application 00-05-053, Opinion, October 5, 2000. (*California Opinion*) (A copy of the Opinion is attached hereto as Attachment 1).

130 Id. at 9-10.

131 Complaint by AT&T Communications of the Southwest, Inc. Regarding Tariff Control Number 21311, Pricing Flexibility-Essential Office Packages, P.U.C. Docket Nos. 21425 and 21475, SOAH Docket No. 473-99-2071, (December, 2000) ("Texas PUC Order") (a copy of this Order is attached hereto as Exhibit 1).

service along with the Essential Office package. AT&T Communications of the Southwest, Inc. ("AT&T") filed a complaint alleging that SWBT's practice of offering Essential Office only in conjunction with its local service is an unreasonable restriction on resale. The Texas PUC found that Essential Office must be separately available on a wholesale basis and that SWBT may not require customers to purchase local services as a prerequisite to obtaining Essential Office. The Texas PUC also established a general presumption that local loop restrictions on separately tariffed services are unreasonable.

> In reaching their decision, the Texas PUC stated, Essential Office and local service are separately tariffed offerings. It is undisputed that it is technically feasible to offer Essential Office separate from SWBT's local service. As such, SWBT's practice of making Essential Office available only on with the purchase of its business local service is a restriction on resale. The FCC has stated that 'resale restrictions are presumptively unreasonable' and 'restrictions and conditions may have anticompetitive results.' Further, FCC regulations state that '[w]ith respect to any restrictions on resale not permitted under [section 251(c)(4)(a) of the federal Telecommunications Act], an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.[132]

In adopting the general presumption of unreasonableness, the Texas PUC opined,

> When addressing the legal requirements that apply to the Essential Office package, the Commission must also give serious consideration to the broader public interest issues involved in this matter. The Commission agrees with the ALJs' suggestion that we establish policy applicable to other vertical services. The ultimate goal is to expand the number of quality products and services available to the public. The Commission recognizes that pricing flexibility packages and lower rates are also in the public interest. Through the wholesale discounts offered, packages like Essential Office encourage competition and provide a mechanism by which telecommunications utilities can create distinct service packages, thereby increasing customer choice. (Citations omitted).[133]

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132 Texas PUC Order at 2-3 (citations omitted).

133 Id. at 3.

In addition to the California and Texas decisions, further evidence to support Sprint's position can be found from the positions of other Bell Operating Companies. SBC and Qwest have agreed to resell the call forwarding family of vertical features to Sprint at a wholesale discount for all of their states.

Verizon has argued elsewhere that it would not be in the public interest for Sprint to receive a wholesale discount because ESPs are not entitled to any discount when they purchase vertical features.[134] This argument fails to provide any legal justification for the restriction on resale sought by Verizon. In this case the Act clearly requires resale of the vertical features in the manner requested by Sprint. While Sprint is touched by Verizon's alleged concern about the claimed impact on ESPs and the voice messaging market, Verizon's concern does not provide a legal basis for the Commission to relieve Verizon of a statutory obligation to telecommunications carriers such as Sprint. In sum, the law (*i.e.*, the Act) must prevail.

Therefore, consistent with the forgoing discussion, the Commission cannot find that Verizon has complied with checklist item 14 until it agrees to resell vertical features to CLECs on a stand-alone basis and at a wholesale discount.

Based on the foregoing, the Commission should refrain from endorsing Verizon's FCC 271 application until Verizon offers vertical features for resale on a stand-alone basis to Sprint at the wholesale discount pursuant to its obligation under the Act.

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134 Verizon Initial Brief at 8, *Petition of Sprint Communications Company L.P. for an Arbitration Award of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) and Related Arrangements with Bell Atlantic-Massachusetts, Inc.*, DTE Dkt. No. 00-54 (filed June 16, 2000).

E. Verizon's failure to meet the 14-point checklist in Section 271 harms competition – and will continue to harm competition – in both the local market and in other markets as well.

Verizon's failure to satisfy any one of the checklist items addressed above is sufficient to justify this Commission's recommendation to the FCC that Verizon's request for in-region, interLATA authority under Section 271 is premature. When Verizon's failings relative to these checklist items are viewed in the aggregate -- and when viewed in conjunction with the difficulties experienced by other CLECs -- the inescapable conclusion is that Verizon has not satisfied the requirements of Section 271(c).

The fact remains that Verizon still controls bottleneck assets in Pennsylvania.[135] Verizon presently exercises that market power in the local market through various measures, including control over the terms of interconnection to its network. As a result, for example, Verizon has "made it difficult" or outright refused to provide physical collocation space,[136] has refuse to resell vertical features,[137] refused to provide reciprocal compensation arrangements which are consistent with the Act,[138] refused to implement efficient processes relative to the ordering of trunking facilities.[139] As Dr. Rearden concluded, since Verizon controls the terms of interconnection to its network, it can then leverage that market power into integrated and other innovative markets, hurting competition in those markets absent fully

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135 Rearden Declaration at ¶ 6.
136 See, Thompson Declaration.
137 See, Flurer Declaration
138 Id.
139 See, Oliver Declaration.

satisfying the fourteen point checklist.[140] Sprint's own ION, for example, is dependent on access to Verizon's DSL capable loops. Unless Sprint can efficiently provision DSL to its customers, it is unable to bring ION to Verizon's markets.

Entry into interLATA markets is the ultimate incentive for a BOC, such as Verizon, to cooperate in making their networks available to retail competitors at cost-based rates. As Dr. Rearden in his Declaration makes clear, if Verizon is prematurely granted entry, "then we can expect to see the end of any further progress beyond that made to date concerning ease of local market entry."[141] In this scenario, local markets will remain noncompetitive. Further, if Verizon can continue to protect its local markets, it can be expected that competition in other markets will be harmed.[142] As Dr. Rearden explained:

> Once Section 271 authority is achieved by the RBOC, there is little immediate incentive and, therefore, the prospect that the existing barriers to entry posed by Verizon's actions will be alleviated. The grant of 271 entry should not be viewed as a starting gate to further entry, as Verizon has claimed, but simply the last chance to reduce barriers to entry. There may be a spurt of local market entry post-271 approval, as CLECs scurry to move forward, since they lose the most meaningful chance to improve the conditions under which they can access Verizon's network. Thus, the Commission must balance the immediate potential for lowered prices, in the short term, with the delayed greater gains possible as a result of ensuring at this juncture that Verizon has provided nondiscriminatory access to its network. In particular, it must be from a forward-looking standpoint of the products and services that the CLEC can offer to the consuming public (assuming technological feasibility). Verizon's corporate posture is, on the other hand, to limit what may or may not be subject to "MFN" provisions in its interconnection arrangements. Such narrow and legalistic interpretations of statute are solely designed to impede market entry by the CLEC.[143]

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140 Rearden Declaration at ¶7.
141 Id. at ¶ 5.
142 Id.
143 Id. at ¶ 11.

One of the "leaps of faith" made in the Verizon 271 filing is that the local market in Pennsylvania is irreversibly open to competition, as measured by the 14-point checklist.[144] Verizon makes claims and cites to the in-roads undertaken to date by CLECs, but has provided no demonstration that the existing state of the local exchange market in Pennsylvania has induced Verizon to lower margins on any of its retail services.[145] As Dr. Rearden noted,

> While market share provides information on the success some firms have had winning customers, it does not directly measure market power. Verizon has asked the wrong questions (e.g., access lines and the aggregate number of CLECs certificated in Pennsylvania), and so its claims of an open local market are virtually meaningless.[146]

This Commission should deny Verizon's 271 application at this time. The Commission must ensure that Verizon has rigorously and substantively complied with the competitive checklist. If viewed from Sprint's experience only, what this means is that the following conditions, at a minimum, must be demonstrated to be present before Verizon enters the long distance market in Pennsylvania:

1. Remove the existing unreasonable restrictions on resale by providing access to stand-alone vertical features;
2. Provide "local" reciprocal compensation for new competitive services, such as Sprint's voice-activated dialing service.
3. Provide physical collocation arrangements, two-way trunking and loop

144 See, e.g.,
145 Rearden Declaration at ¶¶ 9, 11.
146 Id. at 11.

qualification information, as addressed above and in the accompanying Declarations.

4. Provide competitors with nondiscriminatory access to all UNEs, as required by law and the Commission's ultimate determination in the existing UNE proceeding, at Docket Nos. R-00005261, et al.

5. Provide assurance that any Verizon advanced services affiliate will comply with Section 251(c).

IV. CONCLUSION

WHEREFORE, Sprint Communications Company, L.P. and The United Telephone Company of Pennsylvania respectfully request that the Commission should not, at this time, endorse Verizon's entry into the in-region, interLATA market in Pennsylvania for the reasons set forth above.

Respectfully submitted,

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L.P. AND UNITED TELEPHONE
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Dated: February 12, 2001

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CONSULTATIVE REPORT ON APPLICATION OF VERIZON PENNSYLVANIA INC., FOR FCC AUTHORIZATION TO PROVIDE IN-REGION, INTERLATA SERVICE IN PENNSYLVANIA	**: DOCKET NO. M-00001435**

DECLARATION OF GERALD FLURER

ON BEHALF OF
THE UNITED TELEPHONE COMPANY OF PENNSYLVANIA AND SPRINT COMMUNICATIONS COMPANY, L.P.

1. My name is Gerald Flurer. My business address is 6360 Sprint Parkway, Overland Park, Kansas 66251. I am employed as Manager – State Regulatory for Sprint/United Management Company and am authorized to represent Sprint Communications Company, L.P. and The United Telephone Company of Pennsylvania (hereinafter collectively "Sprint").

2. I graduated from Indiana University of Pennsylvania with Bachelors Degrees in English and Criminology. I have been employed by Sprint for sixteen years. In addition to being involved in Customer Service for three years, for the past thirteen years, I have held various positions with increasingly higher degrees of responsibility within the regulatory area including costing, allocations, pricing, and intercompany relations. In my current position, I am responsible for state regulatory activities within Pennsylvania. More specifically, I am responsible for monitoring state regulatory proceedings that could potentially impact the interests of Sprint; developing state specific intrastate regulatory plans and policies; and

coordinating with all affected Sprint entities to ensure the Company's views are effectively communicated and advocated before state commissions. I have testified before the Indiana Utility Regulatory Commission regarding local number portability and have filed testimony in Pennsylvania in Verizon's UNE pricing proceeding. I have also written or contributed to numerous sets of comments on behalf of Sprint in Pennsylvania.

3. The purpose of my declaration is to set forth specific issues related to Interconnection Points, Local Traffic over Access, and Resale of Stand Alone Custom Calling Services.

Interconnection Points ("IPs")

4. Sprint and Verizon have fundamentally different perspectives on key interconnection issues such as trunk arrangements, interconnection points, signaling, network servicing, network management, usage measurement, transit traffic, and parties' responsibilities. Sprint and Verizon should be free to mutually agree on the number and location of interconnection points ("IPs") in any given LATA. However, in the event that agreement cannot be reached, the default IPs should be the Sprint switch centers (up to the number of Verizon IPs), and the Verizon tandem locations.

5. Sprint and Verizon operate dramatically different types of networks, using different network architectures. The Verizon hierarchical network is comprised of two switching layers -- a tandem switching layer and an end office switching layer. Each tandem switch serves as a "hub" to which a number of end-office switches are connected. The end-user customers, in turn, are connected to the end-office switches by relatively short loops. In contrast, the Sprint nonhierarchical network consists of only a single layer of switches that provide both tandem and end-office functionality. It provides tandem functionality in that, like Verizon's tandem, it aggregates a variety of traffic across a wide geographic area comparable to the area served by Verizon's tandems-with-subtending-end-offices. Sprint's centrally located switch provides Sprint's customers with the same end-office switching functionality that Verizon's end-office switches provide to its customers.

6. Neither the FCC nor the Pennsylvania PUC require CLECs to comply with Verizon's plan for interconnection. Nothing in the Act or in the Commission's

rules or regulations requires Sprint or other CLECs to build to Verizon's multiple interconnection points solely to reduce Verizon's reciprocal compensation and transport charges. There is no justification in the Act or the Commission's rules and regulations for Verizon's proposed restrictive and burdensome forecasting, trunking, and physical architecture requirements. Section 251(c) of the Act imposes a duty on Verizon "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access . . . at any technically feasible point with the carrier's network . . . on rates . . . that are . . . reasonable." The Commission must ensure that such resolution meets the requirements of Section 251, including the FCC's regulations prescribed pursuant to Section 251. FCC Rules require that an ILEC must allow interconnection at any technically feasible point of interconnection, including the local switch, the tandem switch, and the central office cross-connect point of interconnection. (See FCC § 51.305). Verizon's interconnection proposals are inconsistent with the Act, and the FCC and Commission orders.

7. Verizon supports a geographically relevant interconnection point (GRIP) plan for determining interconnection points. GRIP plans require CLECs to establish points of interconnection at specified locations in the ILEC network. For example, some GRIP plans require CLEC IPs in every ILEC-defined local calling area, within a few miles of ILEC customers, at each ILEC tandem, or even at some other point selected by the ILEC.

8. Verizon's proposed interconnection arrangement would force Sprint to bear a disproportionate share of the costs of carrying traffic between them. Sprint would be subsidizing Verizon, because Sprint would be financially responsible for delivering traffic originated on its network to Interconnection Points at Verizon's end office switches, located deep within Verizon's network, while Verizon would have no reciprocal obligations for the traffic it delivers to Sprint.

9. Conversely, Verizon delivering its traffic to Sprint far back within Verizon's own local calling area (*i.e.*, at its own end office) would force Sprint to incur the cost of facilities to transport Verizon's originating traffic from Verizon's end office switch (or tandem) to Sprint's interconnection point. This arrangement is unfair and contrary to the FCC's rules. It should be rejected in favor of the balanced, reciprocal approach Sprint recommends.

10. It is not equitable to have Verizon be responsible only for delivering its originating traffic to Sprint at Verizon's own switch while Sprint incurs financial responsibility to interconnect within Verizon's network (*i.e.*, at each of Verizon's end offices). Instead, the more equitable, sensible, and balanced approach is to make each party responsible for transporting its traffic to the same relative point on the other's network. The only point on each party's network where equivalent network interconnection can be accomplished is at Sprint's switch center and at Verizon's tandem center. Each party should be financially responsible for ensuring that sufficient facilities are in place to deliver traffic originating on its network to terminate traffic on the other party's network and bear the cost of providing those facilities.

11. Congress and the FCC have provided direction on this issue. Section 251(c)(2) of the Act mandates interconnection at any technically feasible point. The FCC in its *Local Competition Order* determined that competing carriers are free to choose the most efficient points of interconnection to lower costs of transport and termination. The FCC stated that Section 251(c)(2) "allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic."[1] In that same Order, at ¶ 1062, the FCC ruled that each party bears responsibility for the costs of transporting its originating traffic. This is exactly the same position Sprint advocates here.

12. The Commission should reject Verizon's GRIP proposal. These GRIP requirements shift ILEC transport cost to the new entrant CLEC and forces the CLEC to design an inefficient interconnection network based upon the ILEC's historical network design. Under a GRIP plan, CLEC's sacrifice the savings gained from using new switching and transport technology.

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[1] First Report and Order, *Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶ 172 (*"Local Competition Order"*).

Local Traffic Over Access Trunks

13. Sprint seeks the flexibility to use its access trunks between the Sprint network and the Verizon network for local traffic. Sprint also seeks the recognition that a "default" jurisdiction for all operator traffic cannot be determined before handing off the call to Sprint. Any attempt to automatically characterize all operator services calls as access traffic at the time the call is delivered to the operator services platform is troublesome because it is impossible to determine the jurisdictional nature of an outbound operator call at the time it is made.

14. For example, when a long distance customer dials "00" (without additional telephone number digits), the customer is connected with their presubscribed long distance carrier's operator services. The 00- (zero zero minus) service access codes exist today and do not require routing modification. When an end user dials "00," the call will be routed by the LEC to the Feature Group D or operator access trunks of the presubscribed IXC regardless of whether the destination of the call is ultimately determined to be local, intraLATA, or interLATA. The 00- call is "non-jurisdictional" as the call is passed from the originating network to the operator platform to receive additional call information in the form of voice or tone commands from the end user. Only after the call is routed for completion by the operator services platform can the jurisdiction of the call be determined and reported.

15. In the past, all traffic to 00- dialed operator services was considered access chargeable traffic by default. In the case of a Verizon customer using his

telephone to complete a local telephone call to his mother across the street through use of the 00- dialing code, the 00- code would route the end user to the operator services platform, where the customer could instruct the system to dial the local telephone number for his mother. The end user in effect placed a local call as the call originates and terminates in the same local calling area.

16. It is inefficient for carriers to be required to establish separate trunk groups for local/intraLATA traffic when there is capacity available on the existing access network. From a facilities, trunking, and switch port perspective, there are tremendous network efficiencies to be gained by combining these traffic types. For example, ILECs have built their interoffice networks over many years. Sprint and other CLECs are suddenly expected to build a new, separate network in a much shorter period of time in order for their customers to make and receive local calls. The restrictions Verizon is placing on CLECs would impose precisely the type of economic barrier to entry the FCC's rules were designed to prevent.

17. Local operator service traffic routed over existing access trunks should be classified as local traffic. As an efficient network owner, Sprint manages a common operator services platform to provide enhanced operator services to a number of Sprint service platforms. When Sprint was interconnected to Verizon solely as an IXC, it may have been correct to assume that the digit sequence "00" (zero zero) was for interexchange traffic only. Today, however, Sprint is certified as a competitive local exchange carrier, as well as an IXC and could offer customers enhanced 00- operator services via its own facilities based network in competition with the LEC 0- (zero minus) operator services.